

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

May 20, 2025

Christopher M. Wolpert
Clerk of Court

In re: MARLON ALONZO SMITH,

Movant.

No. 25-4055
(D.C. Nos. 2:21-CV-00081-DN &
2:16-CR-00020-DN-1)
(D. Utah)

ORDER

Before **HOLMES**, Chief Judge, **HARTZ** and **BACHARACH**, Circuit Judges.

Marlon Alonzo Smith, proceeding pro se, seeks authorization to file a second or successive 28 U.S.C. § 2255 motion to challenge his conviction for possession with intent to distribute methamphetamine based on newly discovered evidence. We deny authorization.

On January 1, 2016, a Utah Highway Patrol Trooper stopped Mr. Smith for speeding. During that stop, the trooper screened Mr. Smith's car with his narcotics detection dog, which alerted the trooper to the rear of the car. When the trooper asked Mr. Smith to get out of the vehicle, he refused and sped away. After a high-speed chase, the trooper arrested Mr. Smith. The trooper subsequently searched the trunk of the car and discovered a large amount of methamphetamine.

A grand jury charged Smith with one count of possession with intent to distribute 500 grams or more of methamphetamine, and a federal jury convicted Mr. Smith of that count. This court affirmed the conviction on direct appeal. Mr. Smith then filed a § 2255

motion. The district court denied the motion, and this court denied a certificate of appealability.

Mr. Smith now seeks authorization to file a second or successive § 2255 motion based on newly discovered evidence. We can authorize a second or successive § 2255 motion when the new evidence, “if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense.” § 2255(h)(1).

Mr. Smith’s new evidence is a rental car receipt for a person named Michelle Love who rented a car from Hertz from September 8, 2015, through September 22, 2015. He also attaches a decision from the Fifth Circuit from January 4, 2018, affirming the district court’s decision to revoke Jaquelyn Michelle Love’s supervised release, following her sentence for conspiracy to possess with intent to distribute 50 grams or more of methamphetamine. He argues the government withheld this favorable evidence and it “could have been sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found him guilty of the [drug trafficking] charge.” Mot. for Auth. at 12. He contends Ms. Love “is a person who rented the same car before [he] had rented [it] from Hertz, and he is being accused of [possessing] drugs that Michelle Love [had] been convicted of possessing.” *Id.*

This evidence, however, does not show that no reasonable juror would have convicted Mr. Smith of possession with intent to distribute methamphetamine. First, the rental car receipt is from September 2015, and Mr. Smith was arrested on January 1, 2016. He has not shown that Ms. Love was the only person to have rented that car

between September 22, 2015, and when he rented it at the end of December 2015.

Second, he has not shown that the Michelle Love who rented the car in September 2015 is the same person as Jaquelyn Michelle Love who appealed the revocation of her supervised release. Even if they are the same person, Mr. Smith offers no evidence of the circumstances or the timing of Ms. Love's conviction that would tie it to the over 500 grams of methamphetamine discovered in the rental car he was driving. But more importantly, this evidence does not establish that no reasonable juror would have convicted Mr. Smith of the drug trafficking offense in light of the other evidence introduced at trial.

Mr. Smith challenged the sufficiency of the evidence on direct appeal, and we reviewed the evidence that was before the jury, and the elements of the offense. We first explained that: “[t]he factfinder could reasonably infer that Mr. Smith had direct physical control of the methamphetamine because (1) he was the only person in the vehicle and (2) he claimed to be driving cross-country in his own rental car.” *United States v. Smith*, 800 F. App'x 658, 660 (10th Cir. 2020). And “[t]he factfinder could also reasonably find that Mr. Smith had known about the methamphetamine and had concealed it under the carpet in the car” because “[t]he carpet was missing a rivet, and Mr. Smith had a tool in his luggage that would remove rivets.” *Id.* We concluded the “jury could thus reasonably infer that Mr. Smith had knowingly possessed the methamphetamine.” *Id.*

We then considered Mr. Smith’s allegation “that the police officers planted the drugs out of anger for the car-chase” and his insistence that, “as a black man, he feared being stopped by two white police officers in an unpopulated area.” *Id.* But we observed that, “as Mr. Smith neared a town, he turned around and led the police in a high-speed chase back into a deserted area” and “[s]peeding away from the town suggests that Mr. Smith was trying to evade capture rather than surrender peacefully in a populated area.” *Id.* We also concluded that “[t]he jury needn’t have believed Mr. Smith’s explanation for fleeing and could instead have believed that he fled because he knew that he had methamphetamine inside his car.” *Id.* at 660-61. And we further concluded that “irrespective of why Mr. Smith had fled, the factfinder could reasonably reject this allegation that the officers had planted the drugs.” *Id.* at 661.

Finally, we determined that “[t]he jury could also reasonably infer that Mr. Smith had intended to distribute the methamphetamine” because “[t]he 1178 grams of methamphetamine had a street value ranging from about \$90,000 to over \$124,000.” *Id.* And “the high value of the methamphetamine supports an inference of intent to distribute.” *Id.* And we noted that “an expert witness testified that Mr. Smith’s text messages had reflected arrangements to get the methamphetamine and transport it for distribution.” *Id.* We therefore rejected Mr. Smith’s challenge to the sufficiency of the evidence.

Mr. Smith’s new evidence, viewed in light of the evidence as a whole discussed above, would not be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found him guilty of the offense, as § 2255(h)(1)

requires. Accordingly, we deny authorization. This denial of authorization “shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.” § 2244(b)(3)(E).

Entered for the Court

A handwritten signature in black ink, appearing to read 'C. M. Wolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk